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Supreme Court of the United States

TERM — 1981

ROBERT A. JACOBS AND MIDLAND INSURANCE COMPANY,
Petitioners

v.

UNITED STATES OF AMERICA,
Respondent

APPENDIX TO PETITIONERS' PETITION
FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BY COUNSEL OF RECORD:

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With Whom on the Petition Is:

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UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 10th day of November, one thousand nine hundred and eighty.

Present:

HONORABLE WILFRED FEINBERG,
Chief Judge

HONORABLE THOMAS J. MESKILL,
Circuit Judge

HONORABLE LAWRENCE W. PIERCE,
District Judge

.....x

UNITED STATES OF AMERICA,
Appellee,

—against—

ROBERT A. JACOBS and MIDLAND INSURANCE COMPANY,
Appellants.

.....x

Appeal from the United States District Court for the District of Connecticut.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the judgment of said District Court be and it hereby is AFFIRMED.

Appellants Robert A. Jacobs, a bailbondsman, and his surety, Midland Insurance Company, appeal from an order of the United States District Court for the District of Connecticut, T. F. Gilroy Daly, J., granting the motion of appellee for forfeiture of a $30,000 bond given by appellants on behalf of Salvatore Annunziato, defendant in a criminal case in the district court (United States v. Albert Inorio, Crim. No. N-79-48). This appeal arises out of Annunziato's failure to appear in court as ordered on July 9, 1979. Appellants' defense in the bond forfeiture proceeding, and the basis of their appeal in this court, is that they were excused from their obligation to produce Annunziato because he had been killed prior to July 9 and thus performance was impossible.

On March 13, 1980, appellee moved that the bond be forfeited. On March 25, 1980, appellants filed several discovery requests designed to obtain information allegedly supplied to the government concerning possible threats on Annunziato's life. Appellee opposed these requests. The judge thereafter heard argument on the discovery requests and conducted an in camera examination of confidential evidence in the government's possession pertaining to Annunziato's disappearance. Thereafter, in a memorandum opinion (styled as an order) dated April 14, 1980, the judge denied appellants' request for discovery, stating that "balancing Mr. Jacobs' potential loss against compelling the Government to disclose equivocal information which is likely to lead to the identity of the source leads this Court to conclude that the privilege exception to Rule 26 (b)(1) Fed. R. Civ. P. is applicable to this case and the limitations on invoking that privilege as stated in *Roviaro* [v. United States, 353 U.S. 53 (1957)] inapplicable." On May 30, 1980, the judge conducted a full evidentiary hearing on bail forfeiture, at which he heard various witnesses, including Annunziato's wife; former Special Attorney Donald Abrams, who had told William Dow, Annunziato's lawyer, that the government had heard of a death threat to Annunziato from an "unreliable" confidential source; William Dow; Nicholas Pastore, Director of Operations for the New Haven Police Department; Special Agent Edward Adams; and two employees of the Branford Motor Inn, where

Annunziato had registered and was seen the day before his alleged disappearance. Thereafter, in a memorandum endorsement dated June 16, 1980, Judge Daly granted appellee's forfeiture motion, observing that the circumstantial evidence offered by appellants lacked "the competence, or sufficiency required to excuse a criminal defendant's failure to appear."

We have examined both the sealed information submitted by the government to the district judge and the entire record, including the transcript of the May 30 hearing. We conclude that Judge Daly did not abuse his discretion by refusing appellants' discovery requests, or by granting the government's forfeiture motion. United States v. Gray, 568 F. 2d 1134 (5th Cir. 1978). We affirm the judgment of the district court, substantially for the reasons stated in Judge Daly's opinion dated April 14, 1980 and his endorsement on the June 16, 1980 order.

The point was made at oral argument that no one can be absolutely sure of Annunziato's current whereabouts, or whether he is in fact alive. We wish to make clear if any new evidence is uncovered which indicates that Annunziato was deceased on July 9, 1979, appellants are free to move to reopen the forfeiture proceeding without prejudice from this order.

WILFRED FEINBERG,
Chief Judge

THOMAS J. MESKILL,
Circuit Judge

LAWRENCE W. PIERCE,
District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
	:	
	:	
v.	:	Criminal
	:	No.
	:	N-79-48
SALVATORE ANTHONY ANNUNZIATO a/k/a Midge Renault	:	
	:	
	:	
	:	

RE: Motion for Forfeiture of Bond

ORDER

On March 13, 1980 the United States filed a motion for Bond Forfeiture pursuant to Rule 46(e) Fed. R. Crim. P. The bondsman, characterizing the forfeiture proceeding as a civil action, seeks discovery pursuant to Rules 26, 33 and 36 Fed. R. Civ. P. The United States objects to any such discovery. This Court ordered oral argument be held concerning all pending motions on April 1, 1980.

The paramount issue to be decided by this Court, and on which the surety carries the burden, is whether Mr. Annunziato's failure to appear before this Court on July 9, 1979 was occasioned by his own flight or an act of law or God. *Taylor* v. *Taintor*, 83 U.S. (16 Wall.) (1873);*Reese* v. *United States*, — U.S. (9 Wall.) (1870); *United States* v. *Agueci*, 379 F. 2d 277 (2d Cir.), *cert. denied*, 389 U.S. 897 (1967); *Annot.*, 63 ALR 2d 830 (1959). There is a rebuttable presumption in the government's favor that a defendant's failure to appear in court at the time

designated by the judge was a result of his own indiscretion rather than by forces beyond his control.[1]

This Court declined to grant the defendant's request for admissions and answers to interrogatories from the government as propounded March 25, 1980. Based on the following argument and claim by defense counsel, however, this Court decided to review all the documents in the government's possession relating to this case *in camera:*

> Mr. Dow "But I think your honor put your finger on it. I wouldn't quarrel with the fact that the bondsman does have an obligation to make a showing but where there is information available to assist a bondsman in attempting to make the showing that the individual was—that it was essentially impossible for the individual to appear on the date when required to do so, then I think that fair play would require that at least some of that information be disclosed to the bondsman to allow him to employ that in his investigation to determine or to show that the impossibility existed."
>
> * * *
>
> "I am in a position where I can state I believe with some accuracy that there has to be—that there is some information in the government's file to the effect that Mr. Annunziato was dead on or before July 9, 1979."
>
> The Court "You think there is such information?
>
> Mr. Dow "Yes. . . . [I] am confident that there is information in the government's file to that effect."
>
> (Tr. at April 1, 1980.)

This Court has reviewed all of the documents delivered to it by the Federal Bureau of Investigation (F.B.I.) and finds no information contained therein which establishes that Mr. Annunziato was dead on or before July 9, 1979. The information relative to claims that Mr. Annunziato is dead can at best be

---

[1] Counsel representing the bondsman, Robert A. Jacobs, claims that Mr. Annunziato was deceased as of the operative date.

characterized as speculative uncorroborated multiple hearsay which is also contradictory in nature.

For purposes of this order the Court will assume, as the defendant urges, that a proceeding concerning the forfeiture of bond is a civil matter entitling the parties to the liberal discovery permitted under the Federal Rules.[2] The question now arises as to whether the information reviewed by the Court is in any event subject to disclosure. Rule 26(b)(1) Fed. R. Civ. P. states in relevant part that: "Parties may obtain discovery regarding any matter, *not privileged*, which is relevant to the subject matter involved in the pending action, . . ." [Emphasis aded.] The information contained in the F.B.I. files relative to the whereabouts of Mr. Annunziato, specifically the speculation that he is deceased, was obtained by the F.B.I. from informant sources developed during the course of a criminal investigation.

The sources of such information bring to bear what is known as the informer's privilege which, as stated in the leading case of *Roviaro* v. *United States*, 353 U.S. 53, 59 (1957), "is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law." Where it is likely that disclosure of information, though not identifying the speaker, could lead to the identity of the informant by the very nature of the information disclosed, the informer's privilege is applicable as well.

In the criminal context *Roviaro* delineated the scope of the informer's privilege.

> The scope of the privilege is limited by its underlying purpose. Thus, where the disclosure of the contents of a communication will not tend to reveal the identity of an informer, the contents are not privileged. [Citations omitted.] Likewise, once the identity of the informer has been disclosed

[2] Defendant's Memorandum filed April 1, 1980 at 3, *citing*, the 5th, 6th and 9th Circuits. *Contra* United States v. Jones, 567 F. 2d 965 (10th Cir. 1977).

> to those who would have cause to resent the communication, the privilege is no longer applicable. [Citations omitted.]
>
> A further limitation on the applicability of the privilege arises from the fundamental requirements of fairness. Where the disclosure of an informer's identity, or of the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way. [Citations omitted.] In these situations the trial court may require disclosure and, if the Government withholds the information, dismiss the action. [Citations omitted.]

353 U.S. at 60-61.

The informer's privilege and the limitations stated in *Roviaro* have been held to be equally applicable in civil actions. *Westinghouse Electric Corp.* v. *City of Burlington, Vermont,* 351 F. 2d 762, 769-770 (D.C. Cir. 1965). Having assumed for purposes of this order that a bond forfeiture proceeding is civil in nature this Court agrees with one leading commentator who suggests that since "the defendant in a civil suit . . . is subject to less severe sanctions in the event of a judgment against him than is true in a criminal action, [he] should be required to make a greater showing of need in order to overcome the policies underlying maintenance of the privilege." 4 MOORE'S FEDERAL PRACTICE ¶ 26.61[6.——2], at 26-304 n.5 (2d ed. 1948).

In this "civil proceeding" the defendant in interest is the bondsman, Robert A. Jacobs. Mr. Jacobs' potential liability in this proceeding is the loss of thirty thousand dollars ($30,000). Balancing Mr. Jacobs' potential loss against compelling the Government to disclose equivocal information which is likely to lead to the identity of the source leads this Court to conclude that the privilege exception to Rule 26(b)(1) Fed. R. Civ. P. is applicable to this case and the limitations on invoking that privilege as stated in *Roviaro* inapplicable.

The defendant, therefore, is not entitled to the discovery he seeks. Defendant's request for an extention of time is

GRANTED to April 28, 1980, the day scheduled for an evidentiary hearing in this matter. The material reviewed by the Court will be sealed and marked Court's Exhibit #1.

It is so Ordered.

Dated at Bridgeport, Connecticut this 14th day of April, 1980.

T. F. GILROY DALY
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Cr. No.
	:	N79-48
SALVATORE ANTHONY ANNUNZIATO a/k/a Midge Renault	:	

ENDORSEMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT ON THE GOVERNMENT'S MOTION FOR FORFEITURE OF BOND

June 16, 1980—Viewing the evidence with a circumspective eye, this Court finds the testimony presented by the bondsman as circumstantial evidence of the defendant's death, prior to July 9, 1979, seriously lacks the competence, or sufficiency required to excuse a criminal defendant's failure to appear. The government's motion for forfeiture of bond pursuant to Rule 46(e) Fed. R. Crim. P. is GRANTED, substantially for the reasons set forth in its brief filed June 11, 1980.

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 5th day of February, one thousand nine hundred and eighty one.

.....X

UNITED STATES OF AMERICA,

Appellee,

v.

ROBERT A. JACOBS and MIDLAND INSURANCE COMPANY,

Appellants.

.....X

A petition for rehearing containing a suggestion that the action be reheard in banc having been filed herein by counsel for the defendants-appellants, Robert A. Jacobs and Midland Insurance Company.

Upon consideration by the panel that heard the appeal, it is Ordered that said petition for rehearing is DENIED.

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges of the court in regular active service and to any other judge on the panel that heard the appeal and that no such judge has requested that a vote be taken thereon.

A. Daniel Fusaro
Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Criminal
v.	:	No.
SALVATORE ANTHONY ANNUNZIATO a/k/a Midge Renault	:	N79-48

REQUEST FOR CALENDAR CALL

The United States, through its attorney, the United States Attorney for the District of Connecticut, by Special Attorney Donald L. Abrams requests that the court schedule a calendar call in this case as expeditiously as possible, and respectfully states the following in support thereto:

1. A sealed indictment charging the defendant with two counts of embezzlement and one count of conspiracy was returned at Hartford, Connecticut on April 26, 1979. A bench warrant was issued and bond was set in the amount of One hundred fifty thousand dollars ($150,000) by Magistrate F. Owen Eagan.

2. On April 27, 1979 the defendant was brought before Magistrate Arthur Latimer in New Haven, Connecticut. Bond was reduced to Thirty thousand dollars ($30,000) over the objection of the Government, and travel restrictions were imposed.

3. On May 3, 1979 the defendant appeared before the Honorable T. F. Gilroy Daly and entered a plea of not guilty. A request by the Government to increase the bond of Thirty thousand dollars ($30,000) was denied. The case was continued until June 5, 1979 for jury selection.

4. On June 5, 1979 the case was continued until after Labor Day on the motion of the defendant and co-defendant, Albert Inorio. Defendant Annunziato was not present and his attorney, Mr. Wm. Dow, represented that Mr. Annunziato was in the hospital.

5. On June 27, 1979 Mr. Dow informed Special Attorney Abrams that defendant Annunziato had been missing since June 19, 1979. Later on June 27, 1979, a formal missing person report on Mr. Annunziato was filed with the authorities.

6. Since June 27, 1979, law enforcement personnel have attempted to determine the defendant's whereabouts. These attempts have met with no success.

7. It is respectfully submitted in light of the foregoing that the defendant is unable or unwilling to keep his court commitments.

WHEREFORE, it is respectfully requested that the court schedule this case for a calendar call as expeditiously as possible.

RICHARD BLUMENTHAL
UNITED STATES ATTORNEY

BY:

DONALD L. ABRAMS
SPECIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE

[Certification omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.		Cr. No.
	:	N79-48
SALVATORE ANTHONY ANNUNZIATO a/k/a Midge Renault	:	

MOTION FOR FORFEITURE OF BOND

Comes now the United States, by and through its undersigned attorneys, and respectfully requests that the bond fixed for Salvatore Annunziato in the above-styled case be forfeited, and that a judgment of default and execution be issued. In support thereof, the United States submits the following:

1. Salvatore Annunziato was indicted in the above-styled case on April 26, 1979, along with Albert Inorio. A bond hearing was conducted on April 27, 1979, and bond was set at $30,000 with corporate surety. Surety was listed as Robert A. Jacobs, Midland Insurance Company, 350 Orange Street, New Haven, Connecticut, and a copy of the executed bond papers is attached hereto as Exhibit A.

2. On July 2, 1979, the United States filed a request for a calendar call in the above-styled case, setting forth the following:

a. A sealed indictment charging the defendant with two counts of embezzlement and one count of conspiracy was returned at Hartford, Connecticut on April 26, 1979. A bench warrant was issued and bond was set in the amount of One hundred fifty thousand dollars ($150,000) by Magistrate F. Owen Eagan.

b. On April 27, 1979 the defendant was brought before Magistrate Arthur Latimer in New Haven, Connecticut. Bond was

reduced to Thirty thousand dollars ($30,000) over the objection of the Government, and travel restrictions were imposed.

c. On May 3, 1979 the defendant appeared before the Honorable T. F. Gilroy Daly and entered a plea of not guilty. A request by the government to increase the bond of Thirty thousand dollars ($30,000) was denied. The case was continued until June 5, 1979 for jury selection.

d. On June 5, 1979 the case was continued until after Labor Day on the motion of the defendant and co-defendant, Albert Inorio. Defendant Annunziato was not present and his attorney, Mr. William Dow, represented that Mr. Annunziato was in the hospital.

e. On June 27, 1979 Mr. Dow informed Special Attorney Abrams that defendant Annunziato had been missing since June 19, 1979. Later on June 27, 1979, a formal missing person report on Mr. Annunziato was filed with the authorities.

f. Since June 27, 1979, law enforcement personnel have attempted to determine the defendant's whereabouts. These attempts have met with no success.

3. On July 9, 1979, a calendar call was held before this Court, during which Special Agent David Cotton, Federal Bureau of Investigation, and Bondsman Robert A. Jacobs testified that they were unable to locate Annunziato. At the conclusion of that hearing, a bench warrant was issued by the Court for Annunziato. The U.S. Marshals Service has advised that the warrant has not been executed. Annunziato was severed from the trial of co-defendant Inorio, and the latter was convicted on October 10, 1979.

4. A grand jury investigation was instituted into the disappearance of Annunziato, and has now concluded.

5. Rule 46(e), Federal Rules of Criminal Procedure, provides in pertinent part as follows:

> (1) Declaration. If there is a breach of condition of a bond, the district court shall declare a forfeiture of the bail.

• • •

(3) Enforcement. When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the district court and irrevocably appoint the clerk of the court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes shall forthwith mail copies to the obligors to their last known address.

Accordingly, because Salvatore Annunziato has breached the conditions of his bond regarding appearances in the above-styled case, it is respectfully requested that bond be forfeited and that a judgment of default be issued.

Respectfully Submitted,

RICHARD BLUMENTHAL
UNITED STATES ATTORNEY

BY: WILLIAM A. KEEFER
ATTORNEY
U.S. DEPARTMENT OF JUSTICE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	Cr. No.
v.	:	N79-48
	:	
SALVATORE ANTHONY ANNUNZIATO	:	

REQUESTS FOR ADMISSIONS

It is requested that the United States, within thirty (30) days of the service of this request, make the following admissions for the purposes of this action, to wit that:

1. Prior to June 19, 1979, the Federal Bureau of Investigation received information from a reliable informant that Salvatore Anthony Annunziato's life was endangered and that a "contract" was out on him.

2. That information was conveyed by the Federal Bureau of Investigation to Special Attorney Donald L. Abrams of the Department of Justice.

3. Mr. Abrams conveyed that information to counsel for Mr. Annunziato and indicated that the government considered its sources reliable and the information credible.

4. At that time, Special Attorney Abrams offered the assistance of federal law enforcement personnel to protect Mr. Annunziato's life.

5. Salvatore Anthony Annunziato was last seen by his wife on June 19, 1979 at approximately 8:00 p.m. when, after receiving a telephone call, he left his residence in response to the sound of a car horn.

6. No other person interviewed by local, state or federal law enforcement authorities has seen Mr. Annunziato since that date.

7. Mr. Annunziato has a lengthy criminal record dating back to at least 1942.

8. At no time has Mr. Annunziato ever failed to appear at court when required to do so, even though he has often faced the possibility of lengthy incarceration.

9. Mr. Annunziato has voluntarily surrendered himself for sentencing and incarceration on numerous occasions.

10. Members of Mr. Annunziato's family have filed missing persons complaints with local law enforcement authorities on or about June 27, 1979.

11. Local, state and federal law enforcement authorities have conducted extensive investigations into the circumstances surrounding Mr. Annunziato's disappearance.

12. Many of the individuals interviewed have expressed the opinion that Mr. Annunziato has been killed or executed.

13. Mr. Annunziato's family has received no contact from Mr. Annunziato whatsoever since June 19, 1979.

14. Mr. Annunziato has never previously left his family without any contact or any means of support.

15. A federal grand jury investigation was conducted to determine the whereabouts of Mr. Annunziato.

16. Many of the individuals who appeared before that grand jury or whose information was presented to the grand jury expressed the belief that Mr. Annunziato had been killed or executed.

17. Information in the files of the Department of Justice reveals that Mr. Annunziato has been linked on numerous occasions with members of organized crime up to the time of his disappearance.

18. Information contained in the files of the Department of Justice and/or the Federal Bureau of Investigation indicates that Mr. Annunziato had fallen into disfavor with certain members of organized crime prior to his disappearance.

19. The United States has no sound basis upon which to base a belief that Mr. Annunziato is presently alive or that he willfully failed to appear before this Court.

20. Bondsman Robert A. Jacobs has fully cooperated with federal law enforcement authorities.

21. Robert Jacobs has provided information about this matter to the Special Attorney of the Department of Justice on numerous occasions.

22. Mr. Jacobs has also made extensive efforts to find Salvatore Anthony Annunziato and return him to court.

23. Many of the people whom Mr. Jacobs has contacted have expressed the belief that Mr. Annunziato has been killed or executed and is no longer alive.

24. Given the existence of credible threats against the life of Mr. Annunziato, his past performance on bond, and his habits of providing for and maintaining contact with his family when apart from them, it appears likely that Mr. Annunziato was deceased as of July 9, 1979 and therefore unable to appear in court on that date.

Respectfully submitted,

HOWARD A. JACOBS
JACOBS, JACOBS & GRUDBERG, P.C.
350 Orange Street
New Haven, Connecticut 06503

[Certification omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	Cr. No.
vs.	:	N79-48
	:	
SALVATORE ANTHONY ANNUNZIATO	:	

INTERROGATORIES

It is respectfully requested that the United States of America through the Special Attorney of the Department of Justice, answer under oath, the following interrogatories, within thirty (30) days after the date of service:

1. Please identify by name and address all individuals who have provided to the United States, or any of its agents, attorneys, representatives or others acting in its behalf, or to state or local law enforcement personnel, from April 26, 1979 to the present, any information indicating that the life, health, or safety of Salvatore Anthony Annunziato was endangered.

2. With respect to each individual named in the preceding paragraph, please state:

a. The date, time and location of the transmission of said information;

b. The identity and affiliation of the recipient of said information;

c. Whether any sound transcription, written memorandum, report, note or any other written memorialization of the conveyance of such information was made;

d. If the answer to the preceding subparagraph is in the affirmative, please identify each transcription, memorandum, report, note or memorialization;

e. Whether any reward, fee, moneys, remuneration, or consideration of any kind (including promises of leniency or promises to make cooperation known to law enforcement or judicial authorities) was requested, offered and/or accepted in connection with said information;

f. If the answer to subparagraph (e) is in the affirmative, please state the nature of the consideration, the manner in which it was conveyed, the date of conveyance and, in the case of promises, to whom conveyed;

g. A full and complete summary of all such information;

h. Whether the individual has ever provided other information to any state, local or federal law enforcement authorities;

i. If the answer to subparagraph (h) is in the affirmative, please state the subject matter of such information, to whom that information was transmitted, any and all consideration extended in connection with said information; the date, time, and place of the conveyance of said information; and the recipient of that information;

j. The basis for that individual's information and belief.

3. If you will do so without a motion to produce, please supply copies of all items referred to in response to paragraph 2(c).

4. With respect to the individuals identified in response to paragraph 1, please state whether any have received any benefit whatsoever from the so-called Federal Witness Protection Program.

5. Please identify by name and address all individuals who have provided to the United States of America, or to any of its agents, attorneys, representatives, or others acting in its behalf, or to any state or local law enforcement personnel, any information to the effect that, or expressed the belief that, Salvatore Anthony Annunziato is presently deceased.

6. With respect to each individual named in paragraph 5, please state:

a. The date, time and location of the transmission of said information;

b. The identity and affiliation of the recipient of said information;

c. Whether any sound transcription, written memorandum, report, note or any other written memorialization of the conveyance of such information was made;

d. If the answer to the preceding subparagraph is in the affirmative, please identify each transcription, memorandum, report, note or other memorialization;

e. Whether any reward, fee, moneys, remuneration, or consideration of any kind (including promises of leniency or promises to make cooperation known to law enforcement or judicial authorities) was requested, offered and/or accepted in connection with said information;

f. If the answer to subparagraph (e) is in the affirmative, please state the nature of the consideration, the manner in which it was conveyed, the date of conveyance and, in the case of promises, to whom conveyed;

g. A full and complete summary of all such information;

h. Whether the individual has ever provided other information to any state, local or federal law enforcement authorities;

i. If the answer to subparagraph (h) is in the affirmative, please state the subject matter of such information, to whom that information was transmitted, any and all consideration extended in connection with said information; the date, time, and place of the conveyance of such information;

j. The basis for that individual's information or belief.

7. If you will do so without a motion to produce, please supply copies of all items referred to in paragraph 6(c).

8. Please identify by name and address all individuals who have provided to the United States of America, or to any of its agents, attorneys, representatives, or others acting in its behalf,

or to any state or local law enforcement personnel, any information to the effect that, or expressed the belief that, Salvatore Anthony Annunziato is presently alive and in abscondance and unwilling to appear in court.

9. With respect to each individual named in paragraph 8, please state:

a. The date, time and location of the transmission of said information;

b. The identity and affiliation of the recipient of said information;

c. Whether any sound transcription, written memorandum, report, note or any other written memorialization of the conveyance of such information was made;

d. If the answer to the preceding subparagraph is in the affirmative, please identify each transcription, memorandum, report, note or other memorialization;

e. Whether any reward, fee, moneys, remuneration, or consideration of any kind (including promises of leniency or promises to make cooperation known to law enforcement or judicial authorities) was requested, offered and/or accepted in connection with said information;

f. If the answer to subparagraph (e) is in the affirmative, please state the nature of the consideration, the manner in which it was conveyed, the date of conveyance and, in the case of promises, to whom conveyed;

g. A full and complete summary of all such information;

h. Whether the individual has ever provided other information to any state, local or federal law enforcement authorities;

i. If the answer to subparagraph (h) is in the affirmative, please state the subject matter of such information, to whom that information was transmitted, any and all consideration extended in connection with said information; the date, time, and place of the conveyance of such information;

j. The basis for that individual's information or belief.

10. Please identify by name and address all individuals interviewed by federal law enforcement authorities who have been asked about the whereabouts of Salvatore Anthony Annunziato.

11. Please list by name and address all individuals who have been subpoenaed to testify and/or have testified at any federal grand jury proceeding during the course of which inquiry was made as to the whereabouts of Salvatore Anthony Annunziato.

12. Please state whether the grand jury investigation referred to in paragraph 4(g) of the Government's motion for forfeiture of bond resulted in the return of a "true bill" or "no true bill".

13. If you will do so without a motion to produce, please supply copies of the transcripts of all proceedings before the grand jury in connection with the investigation referred to in paragraph 4(g) of the Government's motion.

14. Please describe the notice provided in connection with the July 9, 1979 calendar call referred to in paragraph 3(g) of the Government's motion and the manner in which said notice was purportedly conveyed to Salvatore Anthony Annunziato.

15. If you will do so without a motion to produce, please attach copies of all said notices referred to in the answer to paragraph 14.

16. If you will do so without a motion to produce, please attach all reports relating to the efforts of any federal law enforcement authority to ascertain the whereabouts of Salvatore Anthony Annunziato.

17. Please state whether the United States of America is presently in possession of any information to indicate that Salvatore Anthony Annunziato has ever willfully failed to appear for any court appearance when required to do so.

18. Please state whether the United States of America has

any information to indicate that Salvatore Anthony Annunziato has ever violated any of the conditions of bond on any previous occasions.

19 (a). Please describe all efforts of the United States of America to locate Salvatore Anthony Annunziato between June 19, 1979 to the present.

(b). Please describe all efforts of state and local law enforcement authorities to locate Salvatore Anthony Annunziato presently known to the United States of America.

20. Please state whether the United States of America has obtained any information about Salvatore Anthony Annunziato through the use of electronic surveillance.

21. If the answer to the preceding interrogatory is in the affirmative, please:

a. Identify the information;

b. Identify the parties to the conversation;

c. State the date and times said information was received;

d. Describe the information;

e. State whether said electronic surveillance was the result of a court order, and, if you will do so without a motion to produce, attach a copy of said court order;

f. State whether a transcription was made of that conversation and, if you will do so without a motion to produce, attach a copy of said transcription;

g. If there is a tape recording of said electronic surveillance, and if you will do so without a motion to produce, please provide a copy of said tape recording.

22. Please state whether any representative of the United States of America has ever informed counsel for Salvatore Anthony Annunziato that his life was endangered and that there was a "contract" out on him.

23. If the answer to the preceding interrogatory is in the affirmative, please state:

a. The date of such communication;

b. The identity of the individual who conveyed such information to counsel;

c. The source of the information conveyed;

d. The basis for the sources' information;

e. Whether the source received any consideration, monetary or otherwise, in connection with the provision of said information;

f. Whether the source has ever previously provided information to local, state or federal law enforcement authorities and, if so, whether he received any consideration for same;

g. Whether the United States offered the services of any law enforcement agencies to protect the life of Salvatore Anthony Annunziato.

24. Please state whether Bondsman Robert A. Jacobs has ever provided the United States, or any of its agents, attorneys, representatives, or others acting on its behalf, with any information with regards to the whereabouts of Salvatore Anthony Annunziato.

25. If the answer to the preceding interrogatory is in the affirmative, please state:

a. The date, time and location of the conveyance of said information;

b. A summary of said information.

26. Please describe all efforts now known to federal law enforcement authorities to have been made by Bondsman Robert A. Jacobs to attempt to locate and return Salvatore Anthony Annunziato.

27. Please state all information presently known to the United States of America which indicates that Mr. Annunziato is presently deceased and identify the sources of said information.

28. Please identify and summarize all information presently in the possession of the United States of America which indicates that Mr. Annunziato willfully failed to appear at court when required to do so and identify the sources of all said information.

29. Please state whether the United States of America has in its files any information to the effect that Salvatore Anthony Annunziato was connected in any way with individuals whom the United States of America considers to be members of "organized crime".

30. If the answer to the preceding interrogatory is in the affirmative, please:

a. Identify the individuals;

b. Identify the source or sources of said information by name and address;

c. Set forth the date, time and place of the receipt of such information;

d. State whether the source or sources of said information has ever received any consideration for such information and, if so, describe that consideration;

e. State whether the source or sources has/have ever previously provided information to federal law enforcement authorities;

f. Provide a full and complete summary of such information;

g. State whether any said transcription, written memorandum, report, note or other written memorialization of the conveyance of said information was made.

31. If you will do so without a motion to produce, please supply copies of all items referred to in response to paragraph 30(g).

32. Please explain why interviews were conducted by the F.B.I. in Florida, California, North Carolina, Pennsylvania and Missouri.

33. Please identify all countries, states or territories other than Connecticut and those listed in paragraph 32 where interviews were conducted by the F.B.I.

34. Please state whether at any time from April 26, 1979 to the present, the United States of America received any information indicating that Mr. Annunziato had fallen into disfavor with individuals whom the United States of America believes to be members of organized crime.

35. If the answer to paragraph 34 is in the affirmative, please describe that information and identify the source.

Respectfully submitted,

WILLIAM F. DOW, III
JACOBS, JACOBS & GRUDBERG, P.C.
350 Orange Street
New Haven, Connecticut 06503

[Certification omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	Cr. No.
v.	:	N-79-48
	:	
SALVATORE ANTHONY ANNUNZIATO	:	

REQUEST FOR PRODUCTION

It is hereby requested that the United States of America, through its Special Attorney, produce to the undersigned or permit the undersigned to inspect and to copy each of the following documents:

1. Any sound transcription, written memorandum, report, note or any other written memorialization of any information indicating that the life, health, or safety of Salvatore Anthony Annunziato was endangered, which was conveyed to the United States, or any of its agents, attorneys, representatives or others acting in its behalf, or to any state or local law enforcement personnel from April 26, 1979 to the present.

2. Any sound transcription, written memorandum, report, note or any other written memorialization of any information to the effect that, or an expression of belief that, Salvatore Anthony Annunziato is presently deceased which was conveyed to the United States of America, or to any of its agents, attorneys, representatives, or others acting in its behalf, or to any state or local law enforcement personnel from April 26, 1979 to the present.

3. Any sound transcription, written memorandum, report, note or any other written memorialization of any information to the effect that, or an expression of belief that, Salvatore Anthony Annunziato is presently alive and in abscondence and unwilling to appear in court, conveyed to the United States of America, or to any of its agents, attorneys, representatives, or

others acting in its behalf, or to any state or local law enforcement personnel, from April 26, 1979 to the present.

4. All of the transcripts of all proceedings before any federal grand jury in connection with the investigation referred to in paragraph 4(g) of the Government's motion for forfeiture of bond.

5. All notices provided in connection with the July 9, 1979 calendar call of the matter of the *United States* v. *Salvatore Anthony Annunziato.*

6. Any court order authorizing electronic surveillance, which electronic surveillance has been employed by the United States in its investigation into the disappearance of Salvatore Anthony Annunziato or, through which, the United States of America has obtained information about Salvatore Anthony Annunziato, from April 26, 1979 to the present.

7. Any sound transcription, written memorandum, report, note or other written memorialization of any information conveyed to the United States, or any of its agents, attorneys, representatives or others acting in its behalf, or to state or local law enforcement personnel, to the effect that Salvatore Anthony Annunziato was connected in any way with individuals whom the United States of America considered to be members of "organized crime".

It is requested that the aforesaid production be made on or before the 30th day following the service of this request at the office of Jacobs, Jacobs & Grudberg, P.C., 350 Orange Street, New Haven, Connecticut.

William F. Dow, III
Jacobs, Jacobs & Grudberg, P.C.
350 Orange Street
New Haven, Connecticut 06503

[certification omitted]

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	No.
v.	:	N-79-48
SALVATORE ANNUNZIATO	:	

Government's Response to Defendant's Request for Extension of Time to File Responsive Memorandum and to Service of Interrogatories and Requests for Admissions

Comes now the United States, by and through its undersigned attorneys, and responds to the request by Salvatore Annunziato for an extension of time in which to file a "responsive" memorandum to the Government's motion for forfeiture of bond.

The rationale for an extension of time is bottomed upon the tenth and final paragraphs of the defendant's motion, as follows:

> An opportunity is requested to present evidence to show that bond should not be forfeited. Counsel requires time to gather evidence to be presented at that hearing. Interrogatories and Requests for Admissions (attached hereto as Exhibits A and B respectively) have been served on the United States in order to assist in obtaining evidence to show why the bond should not be forfeited.
>
> * * *
>
> WHEREFORE, it is respectfully requested that the time within which a Memorandum in Opposition to the Motion for Forfeiture must be filed be extended until such time as discovery is completed, and that an evidentiary hearing be allowed.

As is apparent from the foregoing, the defendant's motion for an extension of time is based upon the assumption that his purported interrogatories and requests for admissions are proper and will be answered. That assumption is erroneous. The defendant apparently relies upon Rules 33 and 36 of the Federal Rules of Civil Procedure in this regard; however, as Rule 1 of

the Federal Rules of Civil Procedure states, the Rules apply only to "suits of a civil nature." The instant case is a federal criminal prosecution, and the defendant's bond was instituted pursuant to the Federal Criminal Code, 18 USC §3146, and the Federal Rules of Criminal Procedure, Rule 46. The Government's motion for forfeiture of bond was filed pursuant to Rule 46(e), Federal Rules of Criminal Procedure, and the Rules of Civil Procedure have no application to such bond forfeiture proceedings. *United States* v. *Jones,* 567 F2d 965 (10th Cir. 1977).

Accordingly, because the defendant has no right to the "discovery" he requests, his motion for an extension of time is groundless, and should be denied.

Respectfully Submitted,

RICHARD BLUMENTHAL
UNITED STATES ATTORNEY

WILLIAM A. KEEFER
Attorney
U.S. Department of Justice

COURT EXHIBIT 1

The contents of this exhibit have not been made available to Petitioners. The Government submitted the contents under seal for *in camera* inspection by the District Court. This exhibit was forwarded under seal to the United States Court of Appeals for the Second Circuit for its examination. Petitioners have requested the Clerk of the United States Court of Appeals for the Second Circuit to certify and forward, under seal, this exhibit.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Cr. No.
v.	:	N-79-48
SALVATORE ANNUNZIATO	:	

GOVERNMENT'S MEMORANDUM IN SUPPORT OF MOTION FOR FORFEITURE AND JUDGMENT OF DEFAULT

Comes now the United States, by and through its undersigned attorneys, and in support of its motion for Forfeiture of Bond by Salvatore Annunziato and for a judgment of default, submits the following memorandum of law:

* * *

Moreover, the cost and inconvenience to the Government in its attempt to locate Salvatore Annunziato has been substantial. An FBI and grand jury investigation into the disappearance of Salvatore Annunziato was conducted between June, 1979 and January, 1980. Approximately 80 persons were interviewed by the FBI pursuant to that investigation, including persons located in Florida, California, North Carolina, Pennsylvania, Missouri, and elsewhere. It should further be noted that the Government is not required to establish the amount of its expenses incurred as a result of a breach of the conditions of bond. *United States* v. *Foster, supra; United States* v. *Accardi, supra; Cf, United States* v. *Stanley, supra; Jeffers* v. *United States, supra.*

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	Cr. No.
v.	:	N-79-48
	:	
SALVATORE ANTHONY ANNUNZIATO	:	

MOTION FOR RECONSIDERATION OF DENIAL OF REQUEST FOR IDENTITY OF INFORMANT

It is respectfully requested that this Court reconsider its order of April 14, 1980 denying defendant's request for the identity of the informer involved in this matter and any information he has supplied to law enforcement authorities regarding any contract on Mr. Annunziato's life and the execution of that contract.

In support of this Motion, defendant submits the brief attached hereto.

Respectfully submitted,

JACOBS, JACOBS & GRUDBERG, P.C.
350 Orange Street
New Haven, Connecticut 06503
Telephone: (203) 772-3100

By
Howard A. Jacobs
Attorney for Defendant